

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

State Building Code Appeals Board
Docket No. 05-433

BOARD'S RULING ON APPEAL

All hearings are audio recorded. The digital recording (which is on file at the office of the Board of Building Regulations and Standards) serves as the official record of the hearing. Copies of the recording are available from the Board for a fee of \$10.00 per copy. Please make requests for copies in writing and attach a check made payable to the Commonwealth of Massachusetts for the appropriate fee. Requests may be addressed to:

Patricia Barry, Coordinator
State Building Code Appeals Board
BBRS/Department of Public Safety
One Ashburton Place - Room 1301
Boston, MA 02108

David Perry)
Appellant,)
)
v.)
)
City of Boston and Charles Colburn)
Appellees)

Procedural History

This matter came before the State Building Code Appeals Board ("the Board") on the Appellant's appeal filed pursuant to 780 CMR 122.1. In accordance with 780 CMR 122.3, Appellant asks the Board to grant a variance from 111.8 of the Massachusetts State Building Code ("MSBC") pertaining to expiration of building permit for the property of 2-6 Guild St, Roxbury, MA 02119 and cause a Stop Work Order issued by the City of Boston Inspectional Services Department to be vacated. In accordance with MGL c. 30A, §§ 10 and 11; MGL c. 143, §100; 801 CMR 1.02 et. Seq.; and 780 CMR 122.3.4, the Board convened a public hearing on June 26, 2007 where all interested parties were provided with an opportunity to testify and present evidence to the Board.

Present and representing himself was the Appellant. Also present were David Fromm, Charles Colburn, John Kennedy, and Walter Parr, Sr.

Decision: Following testimony, and based upon relevant information provided, Board members voted to vacate the Stop Work Order issued by the City of Boston to allow the Appellant to continue and complete the project and further indicated that all of the buildings should be considered portions of one project.

XX..... Granted ☐..... Denied ☐..... Rendered Interpretation

☐.....Granted with conditions (see below) ☐..... Dismissed

The vote was:

XX.....Unanimous ☐ Majority

Reasons for Variance:

Testimony was presented by the David Perry on the construction history and activity on eight building lots at the subject property. The original plans for this work dated back several years.

Building permits were issued for the project in March of 2003. An access road and curb cut was made on Washington St. rather than on the narrower Juniper Street. Due to the change of access, the Lot 3 building was the last to be started. Although some excavation on Lot 3 was done for a foundation, it was later filled- in so that the road could be placed on the lot temporarily.

Additionally, after all the other buildings had been completed and certificates of occupancy (CO) for each had been issued, David Fromm testified that in the November/December 2006 timeframe, a significant amount of earth was removed from Lot 3. However, this activity stopped with the onset of winter. With this activity, it is the Appellant's contention that work progressed on the project as required by the code; causing the permit to remain active.

City of Boston Building Inspector, Charles Colburn testified that for the six-month period prior to the issuance of the stop work order, no building activity was evident. Additionally, Boston Inspector, John Kennedy noted that, even as recently as the March/ April 2007, timeframe no construction activity appeared to be ongoing and no fencing had been erected around Lot 3. Consequently, a determination was made that work had ceased on the project, causing the permit to be void and leading to the issuance of the Stop Work Order.

When questioned by the Chairperson regarding complaints from local residents Mr. Colburn testified that complaints had been received by City of Boston ISD. He noted that when he receives complaints he visits the site to assess the validity of the complaint.

Upon hearing the testimony Keith Hoyle made a motion that the Stop Work Order be vacated and that the Appellant be allowed to complete the project. The motion was seconded by Sandy MacLeod, who added that all of the buildings should be considered one project. Board members indicated that sufficient evidence had been submitted to indicate that work had progressed on the project; albeit slowly. Board members determined that the issuance of a Stop Work Order was not appropriate and should be lifted.

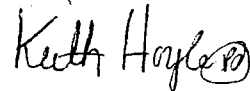
The following members voted in the above manner



Chairman -Harry Smith



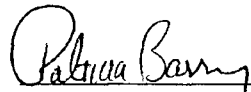
Alexander MacLeod



Keith Hoyle

A complete administrative record is on file at the office of the Board of Building Regulations and Standards.

A true copy attest, dated: August 20, 2007



Patricia Barry, Clerk

Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to a court of competent jurisdiction in accordance with Chapter 30A, Section 14 of the Massachusetts General Laws.